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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 115

STEPHEN FRANKLIN REYNOLDS,

Petitioner,

vs.

H. G. COCHRAN, JR., Director of Division of Corrections, State of Florida,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR THE PETITIONER

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BRIEF FOR THE PETITIONER

Opinion Below

The Supreme Court of Florida did not file an Opinion. Its Order denying Petition for Writ of Habeas Corpus (R. 12) has not been officially reported.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked pursuant to Title 28, U.S. Code, Sec. 1257(3).

The final judgment of the Supreme Court of Florida denying Petitioner's Petition for Habeas Corpus upon the ground that he is imprisoned in violation of his rights under the Fourteenth Amendment to the Constitution of the United States was rendered on September 15, 1959 (R. 12). Petitioner's Motion for Leave to File a Petition for Writ of Habeas Corpus was denied by this Court, but treating the paper submitted by Petitioner as a Petition for Writ of Certiorari, certiorari to the Supreme Court of the State of Florida was granted on May 31, 1960. This Court at the same time granted permission to the Petitioner to proceed in forma pauperis.

Constitutional Provisions and Statutes Involved

The constitutional and statutory provisions involved are set forth in the Appendix hereto, pp. 31-34. These official citations are as follows:

1. Section 1, Fourteenth Amendment, Constitution of the United States, Volume 1, United States Code, 1952 ed., pp. XLV-XLVI.

2. Fifth Amendment, Constitution of the United States, Volume 1, United States Code, 1952 ed., p. XLIV.

3. Section 11, Declaration of Rights, Florida Constitution.

4. Section 4, Article V, Florida Constitution.

5. Section 6, Article V, Florida Constitution.

6. Title 28, Section 1257(3), United States Code.

7. Section 775.09, Chapter 775, Title XLIV, p. 2790, the Official Florida Statutes 1957.

8. Section 775.11, Chapter 775, Title XLIV, p. 2791, the Official Florida Statutes 1957.

9. Section 775.01, Chapter 775, Title XLIV, p. 2790, the Official Florida Statutes 1957.

10. Section 79.10, Chapter 79, Title VI, p. 283, the Official Florida Statutes 1917.

11. Section 79.04, Chapter 79, Title VI, p. 282, the Official Florida Statutes 1957.

12. Section 79.06(1), Chapter 79, Title VI, p. 282, the Official Florida Statutes 1957.

Questions Presented

I.

Where a Petition for Writ of Habeas Corpus to the Supreme Court of Florida contained strong and uncontradicted allegations that Petitioner had been denied an opportunity to be heard through counsel on a Second Offender charge, that he was not informed of his right to a trial as required by statute, that he was prejudged by a prejudiced Court and sentenced under a statute allegedly invalid as applied to him, and where the Supreme Court knew that Petitioner prepared his own Petition without benefit of counsel, was it not a denial of due process under the Fourteenth Amendment to the Constitution of the United States for the Florida Supreme Court to deny such Petition without requiring a response thereto and without an inquiry as to the facts, thus involving a determination of the Federal questions presented therein as to denial of due process and affording this Court jurisdiction to review that decision?

II.

Did the Florida Supreme Court deny due process of law to Petitioner by denying his Petition for Writ of Habeas Corpus without a hearing where such Petition was drawn without aid of counsel and, uncontroverted, alleged:

(1) That his request for a continuance of his hearing on a Second Offender charge in order that counsel might represent him was denied?

(2) That he was not accorded a fair trial nor cautioned as to his rights as required by the Florida Second Offender Statute?

(3) That he was re-sentenced under the Florida Second Offender Statute, whereby having fully served the prior sentence imposed for the same offense, he was put twice in jeopardy and was deprived of his liberty by a Court which no longer had jurisdiction over the subject matter of the crime for which he was re-sentenced?

Statement of the Case

On July 28, 1959, Petitioner filed a Petition for Writ of Habeas Corpus[1] with the Supreme Court of Florida alleging that he was deprived of his liberty in violation of his rights under the Fourteenth Amendment to the Constitution of the United States and particularly the due process clause (R. 1-5) and that Court, without requiring the Respondent to answer and without a hearing on the matter and without making any inquiry as to the facts, issued its Order denying Petition for Writ of Habeas Corpus on September 15, 1959 (R. 12).

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[1] Petitioner prepared and filed his own Petition without aid of counsel.

Under these circumstances the allegations contained in the Petition must be taken as true for purposes of review by this Court. *Hawk* v. *Olson*, 326 U.S. 271, 273 (1945); *White* v. *Ragen*, 324 U.S. 760, 763 (1945); *Williams* v. *Kaiser*, 323 U.S. 471, 473 (1945). These allegations are as follows:

The Petitioner was informed against as a "Second Offender" on February 13, 1958 (R. 8-10) notwithstanding the fact that he had completed a two-year sentence and had been at liberty for some three months by reason of having discharged such sentence. He was arrested on February 18, 1958 without a warrant in Volusia County, Florida, and the arresting officer, a Deputy Sheriff of that county, did not know the reason for the arrest. Petitioner was taken to Polk County, Florida, and was forced to go before the Court against his will. Petitioner informed the Court that he had legal counsel then on the way, and that counsel was to arrive that morning (February 20, 1958), to represent him on whatever the charge might be and requested a continuance for that purpose, but the Court informed the Petitioner "You do not need counsel in this case," and "No point in calling a doctor to a man already dead" (R. 5). The trial court then read two convictions from the record before it, namely, conviction on the 30th day of May, 1934, of the crime of robbery with a sentence of five years in the State Prison and a conviction on May 10, 1956, of the crime of grand larceny with a sentence of two years. The trial court then asked the accused "You are guilty of these two convictions are you not?" and the accused admitted that he was (R. 5). The Court then found the accused guilty of the offense of "Second Offender" and sentenced him to a term of ten years at hard labor in the Florida State Prison (R. 11).

Petitioner filed a Petition for Writ of Habeas Corpus in the Circuit Court of the Tenth Judicial Circuit which

Petition is not a part of this record, and in compliance with the Order of Honorable Gunter Stephenson, *Circuit Judge,* in and for the Tenth Judicial Circuit of Florida, entered on August 5, 1958, Petitioner was brought before the Criminal Court of Record in and for Polk County, Florida, on August 25, 1958, whereupon Judge Roy H. Amidon entered his "Order Setting Aside Sentence Previously Imposed Herein on February 20, 1958 and Entering New Sentence" (R. 6-7). This Order merely vacated the Order of February 20, 1958, under which Petitioner was sentenced to serve ten years in the State Prison and a new sentence of ten years in the State Prison was imposed allowing credit to the Petitioner for all time served in connection with the sentence imposed by that Court on May 10, 1956 upon conviction of the crime of grand larceny and further giving credit for all time served in connection with the sentence of February 20, 1958, for the "offense of Second Offender."[2]

The record is completely devoid of any showing that, at the hearing upon the Second Offender charge, the Petitioner was informed "of his right to be tried as to the truth thereof" or that he was "duly cautioned as to his right," provided by Section 775.11, F.S. 1957, Appendix, pp. 32-33, which statute regulates the procedure in prosecutions for second and subsequent offenses.

---

[2] Thus (not that it matters) as the record now stands, Petitioner was convicted on May 10, 1956 of grand larceny and sentenced to serve two years, which sentence has never been vacated, and he was sentenced on August 25, 1958 to ten years in the State Prison for no crime whatsoever but only pursuant to the Order of Judge Stephenson that a proper sentence be entered (R. 6-7).

Summary of Argument

I.

The Supreme Court of Florida under the Florida Constitution has original jurisdiction to entertain Petitions for Writs of Habeas Corpus and to issue such writs. The Supreme Court of Florida could not have denied Petitioner's petition under a Florida statute forbidding the filing of a Petition for Writ of Habeas Corpus in the Supreme Court when there had been a prior application to a Circuit Court of the State and the Circuit Court had ruled upon the petition because that statute applies only where the facts presented to the Circuit Court and the Supreme Court in the respective petitions were identical. The Supreme Court of Florida did not have before it the Petition for a Writ of Habeas Corpus to the Circuit Court and if it had had such petition before it, the facts in the two petitions were not the same. Additional substantial grounds were alleged in the petition before the Supreme Court. The decision of the Federal questions presented in the Petition was, therefore, essential to the decision of the Florida Supreme Court in denying Petitioner's Petition for Writ of Habeas Corpus.

II.

(A) The Petitioner is deprived of his liberty without having had due process of law in the courts of Florida. Apprehended after being at liberty for three months upon the completion of a prior sentence without being informed of what the charge was against him, upon being brought before the Court he was denied a request for a continuance of his hearing so that he might obtain counsel to defend him upon whatever that charge might be, although he informed the Court that counsel whom he had engaged was en route to the hearing.

(B) He then first learned that he was charged with being a Second Offender. Instead of getting a hearing before a fair and impartial court, he was not only denied counsel but the Court clearly indicated that it had already adjudged him to be guilty before he had had a hearing. The Court failed, as a fair interpretation of the record shows, to follow the mandatory requirement of the Second Offender Statute designed to assure him a fair trial, that the Petitioner be informed that he had a right to be tried as to the truth of the charge against him. The Court itself read what purported to be two records of felony convictions against the Petitioner and then asked him if he were not guilty of these offenses. With counsel denied him, not being informed by the Court that he had a right to a trial as to the charge against him, presumably having no knowledge of what his rights were, and being convinced by the conduct of the Court that the Court had already adjudged him to be guilty, the Petitioner was induced by the Court to plead guilty without any awareness of the significance of his plea. Thus Petitioner was denied the safeguards provided him by the Florida Second Offender Statute as well as the Fourteenth Amendment to the Constitution of the United States.

(C) Regardless of the purpose of the Florida Second Offender Statute, its application to the Petitioner under the facts of this case deprives him of his liberty without due process of law, and places him twice in jeopardy in that, having fully served the first sentence imposed for the same offense, he was re-sentenced by a Court which had lost jurisdiction of the subject matter of this crime. As so applied to the Petitioner, the Statute is repugnant to the due process clause of the Fourteenth Amendment to the United States Constitution.

ARGUMENT

I.

The Florida Supreme Court Ruled Upon and Denied Petitioner's Claims That He Is Imprisoned in Violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A. *The Petition for Writ of Habeas Corpus Properly Raised With the Required Precision Petitioner's Claim That He Is Imprisoned in Violation of His Rights Under the Due Process Clause of the Fourteenth Amendment:*

In *Herndon* v. *Georgia*, 295 U.S. 441, 442-3 (1935), this Court has held that a mere reference to the "Constitution of the United States" may not be sufficient to raise a Federal question in a State Court. In the Petition before this Court, however, Petitioner specifically asserted that at his hearing he was denied the right of a continuance requested in order that he might have the assistance of counsel (R. 4-5) and in his Petition he states clearly and unequivocally that "he is being held, detained and deprived of his personal freedom without due process of law; further, that the trial court violated his constitutional rights and the fundamental fairness that is so essential to the very concept of justice" (R. 1). Petitioner could not have pleaded the violation of the Fourteenth Amendment more clearly had he specifically cited it.

His further pleas that "he is entitled to any and all amendments of the constitution and bill of rights of the United States and the State of Florida" (R. 1), though inartfully expressed, certainly raised in the Florida Supreme Court the Federal question which gives rise to the jurisdiction of this Court, and that question was decided adversely to Petitioner.

B. *Petitioner Properly Invoked the Remedy of Habeas Corpus in the Florida Supreme Court.*

Habeas Corpus is a Writ of right obtainable under the Florida Constitution and the statutes of Florida, by all men who claim to be unlawfully imprisoned against their will and an informal communication sent by a prisoner without means suggesting that he had been deprived of his constitutional right to trial by jury and assistance of counsel will be treated as sufficient application for Writ of Habeas Corpus, though, it did not conform with statutory requirements regarding such applications. *Sneed* v. *Mayo,* Fla. 66 So 2d 865 (1953).

The Florida Constitution vests the State Supreme Court, each of the justices thereof, the various Circuit Courts and the judges thereof, each with concurrent jurisdiction to issue Writs of Habeas Corpus. (Sections 4 and 6, Art. V, Constitution of the State of Florida, Vol. 3, pages 3067-3068, the Official Florida Statutes 1957.) (Appendix, pp. 31-32.) It is clear, therefore, that the Court below had the power to entertain this case.

The Supreme Court of Florida entertains original Habeas Corpus proceedings. *Sneed* v. *Mayo,* Fla. 69 So 2d 653 (1954). We have no such ruling in Florida as was applicable in *Ex parte Hawk,* 321 U.S. 114, 116 (1944), where under Nebraska law the Supreme Court of that state remits the Petitioner to an application to the appropriate state court from whose decision an appeal lies to the State Supreme Court.

In the recent case of *Cash* v. *Culver,* Fla. 122 So 2d 179 (1960), the Florida Supreme Court said:

"When one is convicted of a crime as a result of deprivation of organic due process, the judgment of guilt is

void and may be set aside in a habeas corpus proceeding even after the appeal period has expired."

122 So 2d at p. 187

The *Cash* case involved an original application for a Writ of Habeas Corpus which was first denied without opinion and subsequently was considered on two separate occasions as a result of a mandate by the Supreme Court of the United States. *Cash* v. *Culver,* 358 U.S. 633 (1959); *Cash* v. *Culver,* Fla. 120 So 2d 590 (1960); *Cash* v. *Culver,* Fla. 122 So 2d 179 (1960).

C. *The Petition for Habeas Corpus Was Not Barred by Former Adjudication.*

Section 79.10, F.S. 1957 (Appendix, pp. 33-34) provides that a judgment entered of record in a Habeas Corpus proceeding, shall be conclusive unless reversed upon appeal and that no person remanded by such judgment while the same continues in force shall be at liberty to obtain another habeas corpus for the same cause. Since there was no prior judgment before the Florida Supreme Court, it could not have denied the Petition on the basis of Sec. 79.10, F.S. 1957. Sections 79.04 and 79.06(1), F.S. 1957 (Appendix, p. 34) require a return to a Writ of Habeas Corpus and a hearing upon the issues raised by the return and, a fortiori, a return to the Writ is mandatory if issues are to be raised and a hearing had on those issues. The record is devoid of any showing that Petitioner ever had a hearing in a Circuit Court. Though Petitioner refers to "a Habeas Corpus hearing in 10th Judicial Circuit at Bartow Florida" (R. 3) that "hearing" was a mere re-sentencing (See Order Setting Aside Sentence Previously Imposed Herein on February 20, 1958 and Entering New Sentence (R. 6-7)) pursuant to the Order issued by Circuit Judge Gunter Stephenson of the 10th Judicial Circuit of Florida as a

result of that Court's having considered Petition for Writ of Habeas Corpus without a hearing on the matter and without having required Respondent to answer.

On original habeas corpus proceedings in *Sneed* v. *Mayo*, Fla. 69 So 2d 653 (1954), the Supreme Court of Florida has said:

> " . . . But inasmuch as the purpose of this habeas corpus proceeding is to inquire into the legality of the detention of the prisoner under the judgment and sentence in the cause, the inquiry upon the questions tendered by the petition should be directed to the determination, not of whether the fact of due process does or does not affirmatively appear by the record, but whether *in truth and in fact* due process was actually observed in the course of the trial proceedings."
>
> 69 So 2d at p. 655

According to its own ruling in *Sneed* v. *Mayo, supra*, the Supreme Court of the State of Florida should have made inquiry as to the extent of the "hearing" to which Petitioner inartfully referred in his Petition for Writ of Habeas Corpus to that court. It could not have denied his Petition on the basis of res judicata since the content of his prior Petition to the Circuit Court was not shown in his Petition, nor was the prior Petition part of the meager record before that Court.

The Florida Supreme Court in the recent case of *State* v. *Reynolds*, Fla. 123 So 2d 465 (1960) denied the original Petition for Writ of Habeas Corpus filed by petitioner. In that case, however, the Florida Supreme Court had before it the entire record of the lower courts, which records showed that on a prior Petition for Writ of

Habeas Corpus to the Circuit Court of the 4th Judicial Circuit, the Circuit Judge had heard testimony on the matters raised by the Petition and Return and that after extensive consideration of the matter, the Circuit Judge discharged the writ, dismissed the petition and remanded the petitioner to custody. In addition, oral argument was presented before the Florida Supreme Court by counsel for the petitioner. Therefore, the Florida Supreme Court under the completely different facts in that case was eminently correct in stating:

> "By the original petition now presented to us we are requested to issue the writ on identically the same grounds as those urged upon the Circuit Judge and on the basis of a transcript of the testimony heard by him. We have not been presented with an appeal from the adverse ruling of the Circuit Judge. It is obvious that the petitioner seeks to substitute this proceeding in the place and stead of appeal. We have consistently held that this not be done. Watson v. Stone, 148 Fla. 516, 4 So. 2d 700; State ex rel. Buckner v. Culbreath, 147 Fla. 560, 3 So. 2d 380."
>
> 123 So at p. 466

But in the instant case, there was nothing in the record before the Florida Supreme Court to indicate that the Petitioner had had a hearing on his plea that he had been denied a fair trial and had not been accorded due process of law. Nor did our Petitioner have the benefit of counsel in preparing his Petition nor in arguing his case. The Florida Supreme Court had before it only the Information under which Petitioner had been sentenced as a Second Offender, the Judgment and sentence of the lower court of February 20, 1958, and the Order Setting Aside Sentence Previously Imposed Herein on February 20, 1958 and

Entering a New Sentence August 25, 1958, plus the Petition for Writ of Habeas Corpus. This comprised the meager record before that Court.

In *Washington* v. *Mayo*, Fla. 91 So 2d 621 (1956), the Supreme Court of Florida in effect held that it is essential that an accused be duly cautioned as to his rights in an habitual criminal hearing and that Petitioner had a further right to a hearing on that issue:

> "The petition raises an additional point to the effect that preliminary to a conviction under the habitual criminal statute it is required that the accused be 'duly cautioned as to his rights'. Section 775.11, Florida Statutes, F.S.A. The petition asserts that petitioner was not so informed. The record of the trial submitted to us contains no light on the subject. The respondent asserts that petitioner was informed of his rights. A factual issue is therefore created.
>
> "This Court will not undertake to resolve such factual issues. 31 F.S.A. Supreme Court Rule 20(3). The judgment hereafter announced, therefore, is without prejudice to the rights of petitioner to present the issue by appropriate proceedings in a proper trial jurisdiction."
>
> 91 So 2d at p. 623

Since the Petition for Writ of Habeas Corpus was not barred by a former adjudication, Petitioner herein was denied due process of law by the Florida Supreme Court by its denial of his petition and having exhausted his state remedies it is to this Court that Petitioner turns for justice.

II.

Petitioner Was Denied Due Process of Law by the Florida Supreme Court's Denial of His Petition for Writ of Habeas Corpus.

A. *Petitioner Was Denied Due Process of Law by the Florida Supreme Court's Denial of His Petition for Writ of Habeas Corpus Which Alleged the Trial Court's Refusal to Grant Him a Continuance in Order That He Might Have Counsel Present to Represent Him.*

This Court has held that the denial of an opportunity to obtain counsel in a trial under an Habitual Offender Act is a clear violation of the due process clause of the Fourteenth Amendment. *Chandler* v. *Fretag,* 348 U.S. 3 (1954). In that case the evidence showed that Petitioner had not been informed that he had been charged under the Tennessee Habitual Criminal Act until the day of the trial of the felony which was a fourth offense, whereupon Petitioner requested a continuance to enable him to obtain counsel, but this request was refused and he was given a life sentence. Upon Petition for Writ of Habeas Corpus to the Circuit Court of Knox County, a full hearing was had upon Petitioner's allegation that he had been denied an opportunity to obtain counsel in his defense. Nevertheless the Circuit Court upheld the validity of Petitioner's sentence and the Tennessee Supreme Court affirmed. This Court on Writ of Certiorari to the Supreme Court of Tennessee reversed that court's judgment of affirmation stating that even though petitioner may have waived his right to counsel on the housebreaking and larceny charge it did not follow that he had waived his right to counsel on the Habitual Criminal charge.

In its opinion in *Chandler* v. *Fretag, supra,* this Court reiterated the language it had used in *Powell* v. *Alabama,* 287 U.S. 45 (1932):

> "If in any case, civil or criminal, a State or Federal Court were arbitrarily to refuse to hear a Petitioner by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense . . . By denying petitioner any opportunity whatever to obtain counsel on the habitual criminal accusation, the trial court deprived him of due process of law as guaranteed by the Fourteenth Amendment."
>
> 348 U.S. at p. 10

It has been held by this Court that the right to counsel is a right protected by the Fourteenth Amendment of the Federal Constitution even where the action of the State Court in denying Petition for Writ of Habeas Corpus was on the ground that the State Statute requiring appointment of counsel was not valid. *Williams* v. *Kaiser,* 323 U.S. 471 (1945). This Court held that a conviction on a plea of guilty after refusal of a proper request for counsel because of the accused's incapacity adequately to defend himself will not support imprisonment, and that such procedure violates the Fourteenth Amendment to the Constitution. *Tomkins* v. *Missouri,* 323 U.S. 485 (1945). In both of the above cases the denied request was for court appointed counsel.

Where Petitioner requested a continuance of twenty-four hours for the purpose of consulting counsel, examining the charge, subpoenaing witnesses and preparing a defense, which request was denied, this Court has held that such denial violates the Fourteenth Amendment. *Hawk* v. *Olson,*

326 U.S. 271 (1945). This Court has even felt it necessary to consider at great length the question of whether due process required the State to tender assistance of counsel to defendants who plead guilty to non-capital offenses (*Bute* v. *Illinois*, 333 U.S. 640 (1948)) and to a person charged under an Habitual Criminal Statute with being a fourth offender (*Gryger* v. *Burke*, 334 U.S. 728 (1948)).

Section 11 of the Declaration of Rights, Constitution of the State of Florida (Appendix, p. 31) provides that in criminal prosecutions "The accused . . . shall be heard by himself, or counsel or both. . . ." The Florida Supreme Court held in *Cash* v. *Culver*, Fla. 122 So 2d 179 (1960) that the accused had been denied due process under both the Federal and Florida Constitutions where his defense attorney had withdrawn five days before the trial and the trial court had refused to grant a continuance to afford accused a reasonable opportunity to obtain counsel. The Florida Supreme Court said:

> "There are now many decisions which firmly establish that a fair and reasonable chance to obtain counsel in a criminal case is absolutely essential to due process and therefore vital to the validity of an ultimate judgment of guilt. Chandler v. Fretag, supra (348 U.S. 3), is the leading decision on this particular point..."
>
> 122 So 2d at p. 187

On the Florida Supreme Court's first consideration of the *Cash* case on application for Writ of Habeas Corpus, it denied the writ without opinion as in the case now before this Court. However, in *Cash* v. *Culver*, 358 U.S. 633 (1959) this Court said:

> "... the requirements of due process made necessary the assistance of a lawyer if the circumstances alleged in the Habeas Corpus Petition are true ..."
>
> 358 U.S. at p. 638

In compliance with the mandate of this Court, the Florida Supreme Court issued the Writ, requiring a Return and appointed a commissioner to receive evidence on the question of the denial of the right to obtain counsel resulting from the denial of the Motion for Continuance. *Cash* v. *Culver*, Fla. 120 So 2d 590 (1960). Upon rehearing of the matter, with the trial record supplemented by the evidence offered at the Commissioner's Hearing the Florida Supreme Court concluded that Cash was denied a reasonable opportunity to obtain a lawyer to defend him and was therefore deprived of his constitutional right to be heard through counsel. *Cash* v. *Culver*, Fla. 122 So 2d 179 (1960). The constitutional right afforded under the Fourteenth Amendment to be heard by counsel was clearly delineated by the Florida Supreme Court:

> "We have reviewed our own precedents to demonstrate that they clearly support the decisions of the Federal Courts regarding the essentiality of an opportunity to obtain counsel of one's own choice as an aspect of due process under the Fourteenth Amendment to the Constitution of the United States."
>
> *Cash* v. *Culver*, 122 So 2d at p. 186

The only similarities between the *Cash* case and the instant one is that both defendants asked for a continuance for the purpose of obtaining counsel, both were refused by the trial court, and in both cases the Supreme Court of Florida denied the Petition for Writ of Habeas Corpus. The notable differences in the two cases are that Cash had had a distinguished criminal lawyer on his first trial which resulted in a mistrial; he was still represented by counsel until three days before his second trial when

counsel withdrew; moreover, he was able to and did conduct his own defense in the second trial with professional finesse. And finally, he was accorded, aside from lack of counsel, a fair trial. Whereas in the case of Petitioner he had never had the advice of counsel, he didn't know the charge against him until he was before the court, he was induced into pleading guilty without being cautioned of his right to a trial, he was ignorant of the seriousness of the charge, and he had not the skill required to defend himself.

Under the appalling set of facts shown in the record before this Court, therefore, there can be no doubt that the Petitioner requested and was denied the right to assistance of counsel guaranteed him under the Fourteenth Amendment to the Constitution of the United States.

B. *Petitioner Was Denied Due Process of Law by the Trial Court's Failure to Caution Him as to His Rights as Required by the Florida Second Offender Statute, by the Court's Failure to Observe All the Mandatory Requirements of That Statute and by the Court's Failure to Accord Him a Fair Trial.*

Section 775.11, F.S. 1957 (Appendix, pp. 32-33) provides:

> "... whereupon the Court in which such conviction was had shall cause said person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in such information and of his right to be tried as to the truth thereof, according to law ..."

The record is silent insofar as any averment that the Defendant was apprised of his right to be tried as to the truth of the allegations contained in the Information. In

fact the Petition clearly indicates that he was not so informed (R. 4-5). The procedure prescribed by an Habitual Offender Statute must be strictly pursued and the record of the Court should show at least in essentials that it has been pursued. *People* v. *Brown*, 253 Mich. 537, 235 N.W. 245 (1931). *Sneed* v. *Mayo*, Fla. 69 So 2d 653 (1954), *People* v. *Gowasky*, 244 N.Y. 451, 155 N.E. 737 (1927). Otherwise, those fundamental rights guaranteed under the Fourteenth Amendment to the United States Constitution are disregarded and the offender is convicted without due process of law.

Sec. 775.11, F.S. '57 (Appendix, pp. 32-33), governing the procedure in prosecutions for second and subsequent offenses, provides:

> "... If the jury finds that he is the same person or if he acknowledges or confesses in Open Court *after being duly cautioned as to his rights* that he is the same person the Court shall sentence him to the punishment prescribed in Sec. 775.09 and Sec. 775.10 as the case may be, ..." (italics supplied).

In the record before this Court there is absolutely nothing to show that this Petitioner was cautioned as to his rights. Moreover, Petitioner alleges "that he was forced to go before the Court against his will; that once before the Court your Petitioner informed the Court that he then had legal counsel on the way to represent him in whatever charge may be; ... that after being so informed the trial court so stated to your Petitioner 'You do not need counsel in this case' . . . 'no point in calling a doctor to a man already dead'" (R. 4-5). It is clear that rather than cautioning the Defendant as to his rights, the record shows that the Court denied him his asserted rights. The Court's summary procedure in securing an admission from

the Defendant that he was guilty of the two convictions charged in the Information, as alleged by Petitioner (R. 5) refutes any possible assumption that the Court dealt fairly with the Defendant before it or that the Court had in mind or observed the statutory requirement that the accused be cautioned as to his rights or that it heard the defendant before it judged him.

In *People* v. *Gowasky*, 244 N.Y. 451, 155 N.E. 737 (1927) the defendant appealed from a conviction under the New York Habitual Offender Act which is almost identical to that of the State of Florida. That Court pointed out the absolute necessity of following the law in all its terms and provisions but ruled in the *Gowasky* case that the requirement that the Court inform the defendant of his right to be tried by a jury as to the truth of the charge was waived by defendant's counsel who pleaded guilty for the prisoner to the charges contained in the Information. In the case this Court is now considering there was no counsel, there was no waiver, there was no due process.

This Court stated in *Williams* v. *Kaiser*, 323 U.S. 471 (1945):

> "The petition for habeas corpus was denied without requiring the state to answer or without giving petitioner an opportunity to prove his allegations. And the allegations contained in the petition are not inconsistent with the recitals of the certified copy of the sentence and judgment which accompanied the petition and under which petitioner is confined. Hence we must assume that the allegations of the petition are true. *Smith* v. *O'Grady*, supra (312 U.S. 329). Read in that light we think the petition makes a prima facie showing of denial of the constitutional right."
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> 323 U.S. at pp. 473 and 474

The above statement of this Court applies squarely to Petitioner's case and we must assume that the allegations are true.

C. *Petitioner Was Denied Due Process of Law by the Florida Supreme Court's Denial of His Petition for Writ of Habeas Corpus Since, Having Fully Served the Prior Sentence Imposed for the Same Offense He Was Put Twice in Jeopardy and Was Deprived of His Liberty by a Court Which No Longer Had Jurisdiction Over the Subject Matter of the Crime for Which He Was Re-sentenced.*

Although this Court has upheld habitual offender statutes (*Graham* v. *West Virginia*, 224 U.S. 616 (1912), *Moore* v. *Missouri*, 159 U.S. 673 (1895, *McDonald* v. *Mass.*, 180 U.S. 311 (1901), *Gryger* v. *Burke*, 334 U.S. 728 (1948)), no case has been found where this Court has expressed an opinion as to whether due process of law was denied to one convicted under such a statute where, as in the instant situation, the accused was at liberty after having fully served his prior sentence for the same offense, his new sentence being necessarily imposed by a court which had lost jurisdiction over the subject matter of his offense.

While certain state decisions have upheld the legality of a statute similar to that of Florida, these cases have not upheld the validity of a sentence imposed under such a statute under similar circumstances as are presented in this case. Although there was dicta in *State* v. *Sudekatus*, 72 Ohio App. 165, 51 N.E. 2d 22 (1943) which purported to show that the Habitual Criminal Act of Ohio contemplated a case such as the instant one, the court's ultimate finding was, however, that the defendant must be discharged as he had not been convicted of larceny on his fourth offense and that his prior convictions having been before the enactment of the Ohio Habitual Criminal Act,

there was no basis for a charge under that act. *In re Sims*, Ohio App. 98 N.E. 2d 76, 104 N.E. 2d 193 (1950) involved an appeal from judgment under the Habitual Criminal Act. The Ohio Appellate Court, however, merely held that Defendant's appeal from his last sentence (under the Habitual Criminal Act) was erroneous and that appeal should have been made from the prior sentence.

Since the Louisiana Habitual Criminal Act is similar to that of Florida, *State* v. *George*, 218 La. 18, 48 So 2d 265 (1950) has been regarded as settling the validity of a sentence imposed under such Acts, where the defendant had already served his prior sentence before being charged under the Act. Defendant's Petition for Writ of Certiorari to this Court was denied without opinion. *George* v. *State of Louisiana*, 340 U.S. 949 (1951).

The factual difference between the *George* case and the one before this Court is noteworthy, however, since George was a six time offender, the intervals between his offenses being so brief that there is no doubt but that he was a hardened criminal of the type for which this statute was intended. Moreover, the Louisiana statute provides that it shall not be applicable in cases where more than five years have elapsed between the expiration of the maximum sentence of the previous conviction and the time of the commission of the last felony for which the accused has been convicted. Petitioner, it will be remembered, committed his first crime in 1934 and it was 22 years before he committed the second crime for which he was sentenced twice, the second time being under the Florida Second Offender Act. The word "habitual" hardly described Petitioner in the instant case.

The Second Offender Statute of Florida is almost identical to that of the State of New York. Conviction under the New York Statute was upheld in *People ex rel.*

Fernandez v. *Kaiser,* 230 App. Div. 646, 246 NYS 309 (1930); Aff. 256 N.Y. 581; 177 N.E. 149 (1931). At his trial on a fourth offense the Court revoked the prior sentence which had been fully served and sentenced the accused to fifteen years, the Appellate Division holding that this did not constitute double jeopardy. The Court considered and affirmed the applicability of the Habitual Criminal Act to the defendant, but the factual situation shows that this defendant was already before the Court on trial for two new offenses when the Habitual Criminal charge was made. It is to be noted that the Court did not inquire into the question of whether the Legislature *had given the proper authority to the Courts* to correct a sentence where the accused had already suffered his full punishment for the offense. Certiorari was denied by this Court in *Fernandez* v. *Kaiser,* 284 U.S. 631 (1931), again without opinion.

The Florida Supreme Court has not decided the precise question of whether under its Second Offender Act a person who has fully served the sentence imposed for his last crime may then be re-sentenced in accordance with the Second Offender Statute. In *State* v. *Nelson,* 36 So 2d 427 (1948), the Defendant was convicted and sentenced for a felony in 1937; on October 30, 1939, he was convicted and sentenced to five years imprisonment for another felony; on November 2, 1939 he was sentenced to life imprisonment as a Fourth Offender. On July 14, 1947 his sentence of life imprisonment was voided in habeas corpus proceedings in the jurisdiction of his confinement. On August 27, 1947, after he had served all *lawful* sentences imposed against him, proceedings were had under the Second Offender Statute and he was sentenced as a Second Offender. On December 4, 1947 the Judge of the Criminal Court of Record quashed the Second Offender Information and the

State appealed. The Florida Supreme Court considered the common law which is in force in Florida. Sec. 775.01 F.S. '57 (Appendix, p. 33). The Court reiterated the well established rule that a trial court is without power to set aside sentence after the Defendant has been committed thereunder, and impose a new or different sentence increasing the punishment, even at the same term at which the original sentence was imposed and that a judgment which attempts to do so is void and the original judgment remains in force. The Florida Supreme Court then said:

> "Doubtless the purpose of the use of the language 'at any time' etc., was to overcome the limitations of the general law on the court as to term time and the limitation imposed in the event that execution of the sentence has commenced and the trial court had otherwise lost jurisdiction."
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> 36 So 2d at p. 429

The Court concluded:

> "Whether or not in this jurisdiction there is any limitation of time on the Court's power to impose a sentence as provided by Section 775.09, supra, it is our conclusion that under the facts and circumstances it has not expired in *this* instance." (Italics supplied.)
>
> 36 So 2d at p. 429

It is to be seen, therefore, that in this case the Florida Supreme Court left open the question of the power of a trial court to impose a greater sentence on a person who had fully served the prior sentence given for the same offense.

The Florida Supreme Court again considered a similar case in *Milan* v. *State of Florida*, 102 So 2d 595 (1958). In

that case only two questions were before the Florida Supreme Court, namely:

(1) Did the Court err in denying Defendant's Motion to Quash the Amended Information charging him with being a Second Offender and in sentencing him after he had served the sentence for the second offense?

and

(2) Was the State barred by Chapter 932.05, Florida Statutes 1955 F.S.A. from prosecuting and sentencing him under the Second Offender Statutes, more than two years after the last conviction of felony?

As to the second question the Florida Supreme Court held that the general Statute of Limitations barring prosecution for an offense two years after its commission, has no application to charges under Florida Second Offender Statutes. As to the first of these questions, the Court said:

> "The first of the above questions as posed is not before the Court because there is no showing that appellant had actually served his entire sentence for the second offense before the amended information was filed charging him with being a second offender. On this question there is a difference of opinion among the members of the Court, but as it is not ripe for determination under the record here, no useful purpose could be served by discussing it."
>
> 102 So 2d 596

Thus it is clear that the Florida Supreme Court has not as yet decided what effect the Second Offender Statute of Florida has with regard to a trial court's power to impose a greater sentence upon one who has fully served the sentence previously imposed for the same crime.

The factual situation before this Court deserves careful consideration. Petitioner committed a crime in 1934, was convicted, sentenced, and paid his debt to society. Twenty-two years later he committed a second offense for which he was convicted and sentenced to two years imprisonment. Judging by the short term of imprisonment meted out to the Petitioner there were obviously some mitigating circumstances considered by the trial court. Petitioner fully served his term and, with gain time, was discharged in December of 1957. He now was attempting to rehabilitate himself and to become a worthy member of society. Having done no wrong, he was suddenly arrested and without being told the reason therefor, was dragged across five county lines and taken before the Court. He immediately informed the Court that an attorney was on the way to represent him in whatever charge had been filed against him, that the attorney was to arrive that morning, and requested a continuance so that he might have the benefit of counsel. This the Court summarily refused, telling him he didn't need counsel and that an attorney would be of no help to him. Through a leading question, the Court induced him to admit that he had been convicted of the offenses charged in the Information. Thereupon the Court found him "guilty of the offense of Second Offender" and sentenced him to ten years imprisonment. He was not only denied counsel, but he had no prior notice of the charge against him, he was not cautioned as to his rights, as required by statute, he was led to believe that counsel would be of no avail and induced to admit the convictions charged in the Information, and was apparently prejudged by a prejudiced court. It is obvious the Petitioner did not waive his right to a jury trial by his plea of guilty since he did not understand the significance of the charge against him and his plea of guilty was not intelligently made. Nor, for the same reasons did he waive benefit of counsel

by his plea of guilty after denial of his request for a continuance. *House* v. *Mayo*, 324 U.S. 42 (1945).

All litigation must come to an end. Under the appalling facts outlined above, when the Petitioner had completed his sentence and the trial court no longer had jurisdiction of the subject matter of his former crime, the State's action in arresting him on a charge that does not constitute an offense and re-sentencing him under the Second Offender Statute was in essence a new proceeding which placed him twice in jeopardy for the same offense and deprived him of his liberty without due process of law.

Petitioner's name is and has always remained Stephen Franklin Reynolds. In the absence of a showing that he concealed his identity, the action of the State in waiting almost two years to charge him under the Second Offender Statute amounts in substance to laches and inequity to the Petitioner, the State should have been barred from prosecuting its Second Offender charge.

Thus it is submitted that under the facts of this case, it is repugnant to that standard of due process which this Court has so nobly preserved to allow a trial court which has lost its jurisdictional power with regard to an offense to impose a more severe sentence upon one who has fully served the sentence previously imposed by that court for the same offense. Petitioner respectfully urges, therefore, that Sections 775.09 and 775.11 F.S. '57 as applied to him, are repugnant to the Fourteenth Amendment to the Constitution of the United States in that he is deprived of his liberty by the sentence of a court having no jurisdiction, and therefore without due process of law.

Conclusion

Petitioner herein has been denied every safeguard granted to him by the Constitution of the United States as well as by the Florida Constitution and Statutes. The summary proceedings which have deprived him of his liberty are aptly described by those immortal words "Shocking to the conscience." His plea for counsel, for a fair trial, and for justice has been denied by the State of Florida. It is to this Court that he now turns, as a last resort, seeking that fundamental justice guaranteed to him as a citizen of the United States.

Respectfully submitted,

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APPENDIX

Constitutional and Statutory Provisions Involved

United States Constitution, Amendment XIV, §1

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

United States Constitution, Amendment V

". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; . . ."

Constitution of the State of Florida, Declaration of Rights, Section 11 (*Vol. 3, Florida Statutes*, 1957, p. 3058, Section 11)

Section 11. Rights of accused; speedy trial; etc.—In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury, in the county where the crime was committed, and shall be heard by himself, or counsel, or both, to demand the nature and cause of the accusation against him, to meet the witnesses against him face to face, and have compulsory process for the attendance of witnesses in his favor, and shall be furnished with a copy of the indictment against him.

Constitution of the State of Florida, Article V, Section 4 (*Vol. 3, Florida Statutes* 1957, p. 3067, Section 4)

"The supreme court may issue all writs necessary or proper to the complete exercise of its jurisdiction.

"The supreme court or any justice thereof may issue writs of habeas corpus returnable before the supreme court or any justice thereof, or before a district court of appeal or any judge thereof, or before any circuit judge."

Constitution of the State of Florida, Article V, Section 6 (Vol. 3, Florida Statutes, 1957, p. 3068, Section 6(3))

JURISDICTION. ". . . The circuit courts and judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction."

Florida Statutes in Effect in 1957

Sec. 775.09 (2 Fla. Stat. 1957, p. 2790, Sec. 775.09)

Punishment For Second Conviction of Felony.—A person who, after having been convicted within this state of a felony or an attempt to commit a felony, or under the laws of any other state, government or country, of a crime which, if committed within this state would be a felony, commits any felony within this state is punishable upon conviction of such second offense as follows: If the subsequent felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then such person must be sentenced to imprisonment for a term no less than the longest term nor more than twice the longest term prescribed upon a first conviction. If the subsequent felony is such that upon a first conviction the offender would be punishable by imprisonment for life or for a term of years, in the alternative, then such person must be sentenced to imprisonment for life or for any number of years not less than twenty years.

Sec. 775.11 (2 Fla. Stat. 1957, p. 2791, Sec. 775.11)

Procedure in Prosecutions For Second And Subsequent Offenses.—If at any time after sentence or conviction it shall appear that a person convicted of a felony has previously been convicted of crimes as set forth either in §775.09 or §775.10 the prosecuting attorney of the county in which such conviction was had, shall file an information accusing said person of such previous convictions, whereupon the court in

which such conviction was had shall cause said person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in such information and of his right to be tried as to the truth thereof, according to law, and shall require such offender to say whether he is the same person as charged in such information or not.

If he says he is not the same person or refuses to answer or remains silent, his plea, or the fact of his silence, shall be entered of record and a jury shall be empaneled to inquire whether the offender is the same person mentioned in the several records as set forth in such information. If the jury finds that he is the same person or if he acknowledges or confesses in open court after being duly cautioned as to his rights that he is the same person the court shall sentence him to the punishment prescribed in §775.09 or §775.10 as the case may be, and shall vacate the previous sentence, deducting from the new sentence all time actually served on the sentence so vacated.

Whenever it shall become know to any warden or prison, probation, parole or police officer or other peace officer, that any person charged with or convicted of a felony has been previously convicted within the meaning of §775.09 or §775.10 he shall forthwith report the facts to the prosecuting attorney of the county.

Sec. 775.01 (2 Fla. Stat. 1957, p. 2790, Sec. 775.01)

Common Law of England.—The common law of England in relation to crimes, except so far as the same relates to the modes and degrees of punishment, shall be of full force in this state where there is no existing provision by statute on the subject.

Sec. 79.10 (1 Fla. Stat. 1957, p. 283, Sec. 79.10)

Effect of Judgment.—The judgment so entered of record shall be conclusive until reversed in the manner hereinafter provided for, and no person remanded by such judgment while the same continues in force shall

be at liberty to obtain another habeas corpus for the same cause, or by any other proceeding to bring the same matter again in question except by a writ of error or by action of false imprisonment; nor shall any person who shall be discharged from confinement by such judgment be afterward confined or imprisoned for the same cause, unless by order or judgment of a court of competent jurisdiction.

Sec. 79.04 (1 Fla. Stat. 1957, p. 282, Sec. 79.04)

The Return to The Writ.—The person on whom the writ shall be executed, shall, without delay, bring the body of the prisoner, or cause it to be brought, before the court, justice or judge before whom the writ is made returnable, and at the same time to certify to the cause of the detention.

Sec. 79.06(1) (1 Fla. Stat. 1957, p. 282, Sec. 79.06(1))

Effect of the return.—

(1) GENERALLY.—The return made to the writ may be amended, and shall not be taken to be conclusive as to the facts stated therein, but it shall be competent for the court, justice or judge before whom such return is made to examine into the cause of the imprisonment or detention, to receive evidence in contradiction of the return, and to determine the same as the very truth of the case shall require.